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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94970; File No. SR-PEARL-2022-19]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl Options Fee Schedule

May 23, 2022

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 9, 2022, MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the “Fee Schedule”).

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX Pearl’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule to modify the Taker fees (defined below) in certain Tiers for transactions in Penny Classes (defined below) for MIAX Pearl Market Makers.³ The Exchange originally filed this proposal on April 29, 2022 (SR-PEARL-2022-16). On May 9, 2022, the Exchange withdrew SR-PEARL-2022-16 and resubmitted this proposal.

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member⁴ on

³ "Market Maker" means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁴ "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

MIAX Pearl in the relevant, respective origin type (not including Excluded Contracts)⁵ (as the numerator) expressed as a percentage of (divided by) TCV⁶ (as the denominator). In addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (“Tier”) has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.⁷ Members

⁵ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

⁶ “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX PEARL for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an “Exchange System Disruption” (solely in the option classes of the affected Matching Engine (as defined below)). The term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX PEARL electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term “Exchange System Disruption” and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. See the Definitions Section of the Fee Schedule.

⁷ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX PEARL Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Market Maker, pursuant to the following process. A MIAX PEARL Market Maker appoints an EEM and an

that place resting liquidity, i.e., orders resting on the book of the MIAX Pearl System,⁸ are paid the specified “maker” rebate (each a “Maker”), and Members that execute against resting liquidity are assessed the specified “taker” fee (each a “Taker”). For opening transactions and ABBO⁹ uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Interval Program¹⁰ (“Penny Classes”) than for order executions in standard option classes which are not in the Penny Interval Program (“Non-Penny Classes”), where Members are assessed higher transaction fees and receive higher rebates.

Proposal

EEM appoints a MIAX PEARL Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

⁸ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁹ “ABBO” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g) and calculated by the Exchange based on market information received by the Exchange from OPRA. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹⁰ See Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR-PEARL-2020-06).

The Exchange proposes to amend the Fee Schedule for the Exchange's options market to modify the Taker fees in certain Tiers for options transactions in Penny Classes for MIAX Pearl Market Makers. Currently, the Exchange provides different Taker fees for options transactions in Penny Classes for MIAX Pearl Market Makers when trading against Priority Customer¹¹ Origin in Tiers 5 and 6 depending on whether the executing buyer and seller are or are not the same Member or Affiliate. In particular, the Exchange assesses a Taker fee of \$0.48 for options transactions in Penny Classes for MIAX Pearl Market Makers when trading against Priority Customer Origin in Tier 5 when the executing buyer and seller are the same Member or Affiliates. This is denoted by the symbol "★" following the tables of rebates and fees in Section 1)a) of the Fee Schedule. The Exchange also assesses a Taker fee of \$0.50 for options transactions in Penny Classes for MIAX Pearl Market Makers when trading against Priority Customer Origin in Tier 5 when the executing buyer and seller are not the same Member or Affiliates. This is denoted by the symbol "◇" following the tables of rebates and fees in Section 1)a) of the Fee Schedule. Similarly, the Exchange assesses a Taker fee of \$0.47 for options transactions in Penny Classes for MIAX Pearl Market Makers when trading against Priority Customer Origin in Tier 6 when the executing buyer and seller are the same Member or Affiliates. This is denoted by the symbol "★" following the tables of rebates and fees in Section 1)a) of the Fee Schedule. The Exchange also assesses a Taker fee of \$0.50 for options transactions in Penny Classes for MIAX Pearl Market Makers when trading against Priority Customer Origin in Tier 6 when the executing buyer and seller are

¹¹ The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. See the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

not the same Member or Affiliates. This is denoted by the symbol “◇” following the tables of rebates and fees in Section 1)a) of the Fee Schedule.

The Exchange now proposes to remove the symbols “★” and “◇” from the Fee Schedule and no longer assess different Taker fees for options transactions in Penny Classes for MIAX Pearl Market Makers when trading against the Priority Customer Origin in Tiers 5 and 6 depending on whether the executing buyer and seller are or are not the same Member or Affiliate. With the proposed changes, the Exchange will assess the Taker fee rate of \$0.50 for all options transactions in Penny Classes for MIAX Pearl Market Makers when trading against the Priority Customer Origin in Tiers 5 and 6. Accordingly, the Exchange proposes to delete the \$0.48 Taker fee rate in Tier 5 and \$0.47 Taker fee rate in Tier 6 in the MIAX Pearl Market Origin table for options transactions in Penny Classes when trading against the Priority Customer Origin.

The purpose of adjusting the specified Taker fees is for business and competitive reasons. In order to attract order flow, the Exchange initially set its Taker fees so that they were lower than other options exchanges that operate comparable maker/taker pricing models.¹² The Exchange now believes that it is appropriate to further adjust these specified Taker fees so that they are more in line with other exchanges, but will still remain highly

¹² See Securities Exchange Act Release Nos. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10) (establishing the Exchange’s fee schedule with the highest Tier Taker fee of \$0.47 for Market Makers in Penny Classes); 82900 (March 19, 2018), 83 FR 12836 (March 23, 2018) (SR-PEARL-2018-09) (lowering Taker fees in Tiers 4, 5 and 6 to \$0.43 for Market Makers in Penny Classes approximately one year after the Exchange’s launch); 83814 (August 9, 2018), 83 FR 40605 (August 15, 2018) (SR-PEARL-2018-17) (increasing Taker fees in Tiers 4, 5 and 6 for Market Makers in Penny Classes to bring those fees more in line with other options exchanges’ taker fees at that time).

competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.¹³

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁵ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,¹⁶ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.

¹³ See e.g., BOX Options Fee Schedule, Section I. Electronic Transaction Fees, A. Non-Auction Transactions (base Taker fee of \$0.50 per contract for the Market Maker account type when trading against a Public Customer).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(1) and (b)(5).

In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁷

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 13-14% market share for the month of May 2022.¹⁸ Therefore, no exchange possesses significant pricing power. More specifically, as of May 9, 2022, the Exchange has a market share of approximately 4.67% of executed volume of multiply-listed equity options for the month of May 2022.¹⁹ The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).²⁰ The Exchange experienced a decrease in total market share for the month of March 2019, after the proposal went into effect.

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

¹⁸ See “The market at a glance,” (last visited May 9, 2022), [available at https://www.miaxoptions.com/](https://www.miaxoptions.com/).

¹⁹ See *id.*

²⁰ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

Accordingly, the Exchange believes that its March 1, 2019, fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to modify the Taker fees in certain Tiers for options transactions in Penny classes for Market Makers is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same Origin type are subject to the same tiered Taker fees and access to the Exchange is offered on terms that are not unfairly discriminatory. For competitive and business reasons, the Exchange initially set its Taker fees for such orders generally lower than certain other options exchanges that operate comparable maker/taker pricing models.²¹ The Exchange now believes that it is appropriate to modify those specified Taker fees by removing the different rates depending on whether the executing buyer and seller are the same Member or Affiliates, thereby making the Taker fee the same \$0.50 for Tiers 5 and 6 so that they are more in line with other exchanges, and will still remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.

The Exchange believes its proposal is not unfairly discriminatory because, with the proposed changes, the Taker fees for Market Makers will be the same as the Taker fees for all other Origin types except for Priority Customer Origin orders. With the proposed changes, the Taker fees for Market Makers will be \$0.50 per contract for all Tiers, which is the same as the Taker fees for all Tiers for the Non-Priority Customer, Firm, BD, and non-MIAX Pearl

²¹ See supra note 12.

Market Makers Origin (“Professional Members”). The Exchange believes that it is equitable and not unfairly discriminatory to assess higher Taker fees to Market Makers and Professional Members than to Priority Customer Origin orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).²² This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including non-Priority Customers, Non-MIAX Pearl Market Makers, Firms, and Broker-Dealers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes in the Taker fees for the applicable market participants should continue to encourage the provision of liquidity that enhances the quality of the Exchange’s market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. The proposed rule changes should enable the Exchange to continue to attract and compete for order flow with other exchanges. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing.

The proposed Taker fee adjustments are intended to keep the Exchange’s fees highly competitive with those of other exchanges, and to encourage liquidity and should enable the Exchange to continue to attract and compete for order flow with other exchanges. The

²² See supra note 11.

Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because the proposal modifies the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²³ and Rule 19b-4(f)(2)²⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁴ 17 CFR 240.19b-4(f)(2).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PEARL-2022-19 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PEARL-2022-19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-PEARL-2022-19, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,

Assistant Secretary.

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²⁵ 17 CFR 200.30-3(a)(12).